

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY


(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

REC'D 02 MAR 2006

WIPO

PCT

Applicant's or agent's file reference PWO051624	FOR FURTHER ACTION		See Form PCT/PEA/416
International application No. PCT/US2004/040970	International filing date (day/month/year) 08.12.2004	Priority date (day/month/year) 08.12.2003	
International Patent Classification (IPC) or national classification and IPC B65D77/04			
Applicant MEADWESTVACO CORPORATION et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 7 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> sent to the applicant and to the International Bureau) a total of 14 sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input checked="" type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand 06.10.2005		Date of completion of this report 01.03.2006	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer Segerer, H Telephone No. +49 89 2399-8201	



**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/US2004/040970

Box No. I Basis of the report

1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

Description, Pages

3-13	as originally filed
1, 2, 2a-2e	filed with telefax on 25.11.2005

Claims, Numbers

1-43	filed with telefax on 25.11.2005
------	----------------------------------

Drawings, Sheets

1/15-15/15	as originally filed
------------	---------------------

- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
 - ☐ the claims, Nos.
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):
4. ☒ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
 - ☒ the claims, Nos. 1,10,12,14,16,18,27,31,36,38
 - ☐ the drawings, sheets/figs
 - ☐ the sequence listing (*specify*):
 - ☐ any table(s) related to sequence listing (*specify*):

* If item 4 applies, some or all of these sheets may be marked "superseded."

**INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY**

International application No.
PCT/US2004/040970

Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-43 (if clarified/rectified)
	No: Claims	
Inventive step (IS)	Yes: Claims	1-43 (if clarified/retified)
	No: Claims	
Industrial applicability (IA)	Yes: Claims	1-43
	No: Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/US2004/040970

Re Item V

**Reasoned statement with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement**

Reference is made to the following documents:

- D1: GB-A-2 296 700 (M.Y. SHARP INTERPACK LIMITED; INSIGHT CARTONS LIMITED) 10 July 1996 (1996-07-10)
- D2: GB-A-1 553 868 (MAYLED E C) 10 October 1979 (1979-10-10)
- D3: US-A-4 284 204 (CAREY, JR. ET AL) 18 August 1981 (1981-08-18)
- D4: GB-A-2 279 334 (FIELD GROUP PLC) 4 January 1995 (1995-01-04)
- D5: US 2002/094942 A1 (DANNEELS ALLISON JANE ET AL) 18 July 2002 (2002-07-18)
- D6: DE 76 08 212 U1 (DEUN, PETER VAN, 6070 LANGEN) 8 July 1976 (1976-07-08)

I) Reasoned statement for claims 1-43

I.1) Article 34(2)(b) PCT, assumption for the examination and clarity remark:

The amendments filed with the telefax dated 25.11.2005 comprise an amended set of claims (claims 1-43 replacing claims 1-37 as filed) including (in addition to the single independent method claim 18) eight amended independent/independently formulated claims of the category "product" (being claims 1, 10, 12, 14, 16, 27, 31 and 36) and another new independent claim of the category product (claim 38); said amended independent claims are to be considered unitary, since said amended claims are from now on linked by a common concept which is considered inventive in view of the available prior art (cf. Item I.2; provision of an internal mechanism locking/retaining a container within an outer sleeve wherein said sleeve prevents any access to said internal locking mechanism). The amendments (definitions of said common concept in independent claims 1, 10, 12, 14, 16, 27, 31, 36 and new independent claim 38) are, however, (at least partly) based on terms which do not appear to be comprised in the application as filed; in particular the new term "barrier" (for defining the access preventing property of the sleeve) cannot be

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/US2004/040970

considered supported by the description such that claims 1, 10, 12, 14, 16, 27, 31, 36 and new independent claim 38 introduce subject-matter which extends beyond the content of the application as filed, contrary to Article 34(2)(b) PCT.

Assumption for the examination: According to Rule 70.2(c)PCT, this report is to be established as if said unallowable amendment (use of term "barrier") had not been made; i.e. the examination is based on a rectified independent product claim 1 (with related method claim 18) defining a container with outer sleeve being inter-engaged via opposing mating surfaces "wherein a portion of the outer sleeve provides a covering" preventing access to said mating surfaces (cf. figures of the application as filed in combination with par. [0002] - [0004]).

Remarks:

- a corresponding assumption is applied to the other independent claims 10, 12, 14, 16, 27, 31, 36 and 38.
- the claim structure present on file (comprising 9 independent/independently formulated claims of the category product) lacks clarity/conciseness in the sense of Article 6 PCT wherein the applicant's attention is drawn to the fact that the maintenance of said structure is likely to lead to a substantial "lack of clarity / conciseness"-objection in a later national/regional phase (the applicant's attention is in particular drawn to the fact that under the provisions of the EPC, Article 84 in combination with Rule 29(2) EPC, an application may not contain more than one independent claim in a particular category).

I.2) Rectified independent product claim 1 with related method claim 18

The document D1 is regarded as being (besides D2, D3) the closest prior art to the subject-matter of claim 1; D1 discloses "a product package comprising ... a product container ... and an outer sleeve retaining said ... container (cf. D1, page 4 in combination with fig.5; disclosure of a tray-type container ref. 10 which is retained within a resilient cardboard sleeve ref. 10). Moreover, retaining means comprising "an external ... and an internal opposing mating surface engaging said external mating surface" are also disclosed by the package of D1, wherein D1 discloses specific retaining means of said type (as defined in dependent claim 6) being a tab of the sleeve and a corresponding

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/US2004/040970

recess of the container/tray (thereby providing a tamper/pilfer-proof package; cf. D1, page 1, par.3 and fig. 1-5, ref. 20 and 36).

- Since the locking mechanism according to D1 is visible/accessible from outside, the subject-matter of rectified claim 1 (cf. assumption under Item I.1) differs in the provision of "... a portion of the outer sleeve (providing) a covering preventing access to said mating surfaces". The subject-matter of rectified claim 1 is therefore new (Article 33(2) PCT).

- Since none of the available prior art documents discloses or teaches the claimed covering portion of the sleeve (for reliably preventing any unauthorized actuation of the internal locking mechanism), rectified claim 1 is considered inventive, too (Article 33(3) PCT).

- Claim 1 defining a "product package" also clearly meets Article 33(4) PCT.

The same reasoning applies, mutatis mutandis, to independent claim 18 (if rectified; cf, Item I.1) defining a corresponding "method for packaging a product".

I.3) Claims 2-17, 19-43

Further claims 2-17 and 19-43 (including independently formulated products claims 10, 12, 14, 16, 27, 31, 36 and 38) define embodiments of product/method claims 1 and 18; i.e. said claims are dependent on claims 1, 18 and as such also meet the requirements defined in Article 33(1) PCT).

II) Further Comments

- The independent claims are not in the two-part form in accordance with Rule 6.3(b) PCT.

**INTERNATIONAL PRELIMINARY
REPORT ON PATENTABILITY
(SEPARATE SHEET)**

International application No.

PCT/US2004/040970

- The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).
- New description pages repeating merely the contents of the amended claims should have been avoided (cf. new page 1, last. par.- page 2d).
- Contrary to the requirements of Rule 5.1(a)(ii) PCT, relevant background art documents are not cited (cf. D1-D6).
- Page 1, par. 1 should have been omitted (incorporation of the priority document).
- Further minor defects: the unclear term "spirit of the invention" (cf. par. [0037] and [0061]) should have been replaced by the term "scope of the invention ... as defined by the claims"; SI-Units should have been used (cf. par. [0038] defining a thickness of 0,025") and par. [0054] should have been corrected, since Fig. 21 (and not Fig. 20 as indicated) shows the assembly (step) of the product package.